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OFFICE OF PETITIONS

In re Application of	:	
William E. Archer	:	
Application No. 10/729,241	:	DECISION ON PETITION
Filed: December 5, 2003	:	
Attorney Docket No. 1-15822	:	
Title: DUAL FUNCTION BRAKE SYSTEM	:	

This is a decision on the petition filed on August 16, 2004, pursuant to 37 C.F.R. §1.137(f), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

- (1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication¹;
- (2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
- (3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner states that the instant nonprovisional application is the subject of an application filed in a foreign application prior to the filing of the instant application.

The record discloses that on December 5, 2003, the date of filing of the instant application, a Request and Certification under 35 USC 122(b)(2)(B)(i) was filed, certifying that "the invention disclosed in the attached **application has not and will not** be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing." This request was signed by the petitioner, over his registration number.

With the instant petition, petitioner states that the filing of a foreign application corresponding to the instant application was filed **prior** to the date of filing the instant application.

¹ See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at <http://www.uspto.gov/web/forms/index.html>.

The instant nonprovisional application did not become abandoned as a result of the published international application filed prior to the present application. In this regard, 35 USC 122(b)(2)(B)(iii) states:

An applicant who has made a request under clause (i) but who **subsequently files, in a foreign country or under a multilateral international agreement** specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional (emphasis added).

The facts of this case are that the subject application was filed in Italy on November 12, 2003, which is prior to the filing of the instant application on December 5, 2003. The statute does not provide for the situation where a certification under 35 USC 122(b)(2)(B)(i) was made, despite the fact that an application was previously filed under a multilateral agreement. The statute at 35 USC 122(b)(2)(B)(iii) only provides for revival in the situation where a certification was made under 35 USC 122(b)(2)(B)(i) at the time of filing the application and an application was subsequently filed in a foreign country or under a multinational agreement without notifying the Office within 45 days of the filing thereof.

In view of the above, and since this application did not become abandoned pursuant to the provisions of 35 USC 122(b)(2)(B)(iii), a petition to revive under the provisions of 37 CFR 1.137(f) is inappropriate and must be dismissed.

Therefore, the petition is **DISMISSED AS INAPPROPRIATE**.

Payment of the \$1330.00 petition fee is acknowledged. The petition fee will not be refunded, as this petition was not necessitated by any error on the part of the Office.

After the mailing of this decision, the application file will be forwarded to Technology Center 3600.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.



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